



Office of the Attorney General
State of Texas

DAN MORALES
ATTORNEY GENERAL

December 22, 1995

Ms. Elaine Fannin
Texas Department of Agriculture
P.O. Box 12847
Austin, Texas 78711

OR95-1597

Dear Ms. Fannin:

You ask whether certain information is subject to required public disclosure under the Texas Open Records Act, chapter 552 of the Government Code. The Texas Department of Agriculture (the "department") received several unrelated requests for information relating to pesticide applications. Your requests were assigned ID# 28989, ID# 29964, ID# 30733, ID# 32099, ID# 32681, and ID# 34855.

You have released much of the requested information; you assert, however, that the information submitted for our review, including medical records and references to those records, are excepted from disclosure pursuant to section 552.101 of the Government Code on the basis of common-law privacy.

Section 552.101 excepts "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Information may be withheld under section 552.101 in conjunction with common-law privacy only if the information is highly intimate or embarrassing *and* it is of no legitimate concern to the public. *Industrial Found. v. Texas Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976), *cert. denied*, 430 U.S. 931 (1977).

With respect to medical information, common-law privacy does not protect all medically related information. *See* Open Records Decision No. 478 (1987). Individual determinations are required. Open Records Decision No. 370 (1983). This office has determined that the following information is excepted from disclosure by common-law privacy: the fact that a person broke out in hives as a result of severe emotional distress, Open Records Decision No. 470 (1987), the kinds of prescription drugs a person

is taking, Open Records Decision No. 455 (1987), and information regarding drug overdoses, acute alcohol intoxication, obstetrical/gynecological illnesses, convulsions/seizures, or emotional/mental distress, Open Records Decision No. 343 (1982). *See also* Open Records Decision No. 422 (1984) (regarding emotional or mental distress).

We have reviewed the information you wish to withhold on the basis of common-law privacy. The documents contain symptoms of illness alleged to be caused by exposure to pesticides. The symptoms noted are not highly intimate or embarrassing, and we believe there is a legitimate public interest in their disclosure. Therefore, you may not withhold the marked information on the basis of common-law privacy.

Section 552.101 also excepts from disclosure information that is confidential by statute. Section 5.08¹ of the Medical Practice Act, V.T.C.S. art. 4495b, provides:

(a) Communications between one licensed to practice medicine, relative to or in connection with any professional services as a physician to a patient, is confidential and privileged and may not be disclosed except as provided in this section.

(b) Records of the identity, diagnosis, evaluation, or treatment of a patient by a physician that are created or maintained by a physician are confidential and privileged and may not be disclosed except as provided in this section.

In addition, section 5.08(j)(3) provides for further release of confidential medical record information obtained with a valid consent for release only if the disclosure "is consistent with the authorized purposes for which consent to release the information was obtained." *See also id.* § 5.08(c).

We have reviewed the information submitted to this office. Some of the documents are confidential under subsection (b) of section 5.08. Similarly, information in the file that has been extracted from the medical records may only be released in accordance with subsections (c) and (j)(3). The Medical Practice Act prohibits disclosure of the medical record information unless the department concludes that further release is authorized pursuant to subsections (c) or (j)(3). We have marked the information that is subject to the provisions of the Medical Practice Act. The remaining information must be disclosed.

¹The Seventy-fourth Legislature has amended section 5.08 of the Medical Practice Act, V.T.C.S. art. 4495b, effective September 1, 1995. *See* Act of May 28, 1995, ch. 856, §§ 4-7, 1995 Tex. Sess. Law Serv. 4290, 4293-95 (Vernon); Act of May 27, 1995, ch. 1039, § 71, 1995 Tex. Sess. Law Serv. 5145, 5169 (Vernon).

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Loretta R. DeHay
Assistant Attorney General
Open Records Division

LRD/rho

Ref.: ID# 28989
ID# 29964
ID# 30733
ID# 32099
ID# 32681
ID# 34855

Enclosures: Marked documents

cc: Ms. Jaquelyn W. Friedrich
McClanahan & Associates
2110 Lyric Centre
440 Louisiana
Houston, Texas 77002
(w/o enclosures)

Mr. Richard Lowerre
Henry, Lowerre, Johnson, Hess & Frederick
202 West 17th Street
Austin, Texas 78701
(w/o enclosures)

Mr. David R. Eby
3206 Martin Blvd.
Wichita Falls, Texas 76308
(w/o enclosures)

Mr. Darryl Marshall
U.S. Aviation Underwriters, Inc.
Attn: Claims Department
15303 Dallas Pkwy., Suite 1370
Dallas, Texas 75248
(w/o enclosures)

Mrs. Jerry Blonsett
3109 Longhorn
Rosenberg, Texas 77471
(w/o enclosures)